

IN THE SUPREME COURT OF THE STATE OF NEVADA

MIN CHOE,  
Appellant,


vs.

BAC HOME LOANS SERVICING, LP  
F/K/A COUNTRYWIDE HOME LOANS  
SERVICING, LP,  
Respondent.

No. 58501

**FILED**

**MAY 10 2012**

TRACIE K. LINDEMAN  
CLERK OF SUPREME COURT  
BY   
DEPUTY CLERK

ORDER OF AFFIRMANCE

This is an appeal from a district court order denying a petition for judicial review in a foreclosure mediation program (FMP) matter. Second Judicial District Court, Washoe County; Patrick Flanagan, Judge.

This court reviews a district court's factual determinations deferentially, Ogawa v. Ogawa, 125 Nev. 660, 668, 221 P.3d 699, 704 (2009) (explaining that a "district court's factual findings . . . are given deference and will be upheld if not clearly erroneous and if supported by substantial evidence"), and its legal determinations de novo. Clark County v. Sun State Properties, 119 Nev. 329, 334, 72 P.3d 954, 957 (2003). Absent factual or legal error, the choice of sanction in an FMP judicial review proceeding is committed to the sound discretion of the district court. Pasillas v. HSBC Bank USA, 127 Nev. \_\_\_, \_\_\_, 255 P.3d 1281, 1287 (2011).

To obtain a foreclosure certificate, a deed of trust beneficiary must strictly comply with four requirements: (1) attend the mediation; (2) participate in good faith; (3) bring the required documents; and (4) if attending through a representative, have a person present with authority to modify the loan or access to such a person. NRS 107.086(4) and (5); Leyva v. National Default Servicing Corp., 127 Nev. \_\_\_, \_\_\_, 255 P.3d

1275, 1279 (2011) (concluding that strict compliance with these requirements is necessary).

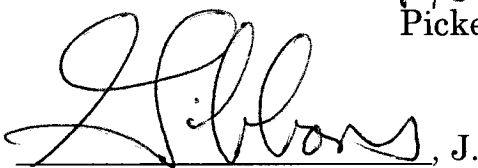
Having reviewed the briefs and appendices, we conclude that the district court did not abuse its discretion in denying the petition for judicial review and ordering a foreclosure certificate to issue. Appellant challenges the validity of the assignment in the case because it was generated by Mortgage Electronic Registration Systems (MERS). Courts in Nevada and across the nation have repeatedly recognized that MERS serves at least some legitimate business purpose.<sup>1</sup> See, e.g., Weingartner v. Chase Home Finance, LLC, 702 F. Supp. 2d 1276, 1280, 1282 (D. Nev. 2010); Gomes v. Countrywide Home Loans, Inc., 121 Cal. Rptr. 3d 819, 821 (Ct. App. 2011); Jackson v. Mortgage Electronic, 770 N.W.2d 487, 490-91 (Minn. 2009); MERS v. Nebraska Dept. of Banking, 704 N.W.2d 784, 787-88 (Neb. 2005); BAC Home Loans Servicing, L.P. v. White, 256 P.3d 1014, 1017 (Okla. Civ. App. 2010). Consequently, we reject appellant's contention that the assignment was invalid based on its connection to


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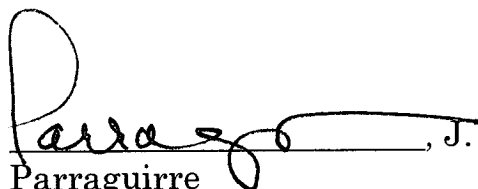
<sup>1</sup>Several courts have confirmed MERS' legitimacy with respect to the precise issue presented here: whether MERS, acting as a lender's nominee, can assign the lender's ownership of a note to another entity. See, e.g., Smith v. Community Lending, Inc., 773 F. Supp. 2d 941, 944 (D. Nev. 2011) (concluding that a provision in a deed of trust "indicates an intent to give MERS the broadest possible agency" on behalf of the lender and that "[s]uch agency would include the ability to sell the interest in the debt"); Crum v. LaSalle Bank, N.A., 55 So. 3d 266, 269 (Ala. Civ. App. 2009) (concluding that an identical provision indicated that "MERS was authorized to perform any act on the lender's behalf as to the property, including selling the note"); Taylor v. Deutsche Bank Nat. Trust Co., 44 So. 3d 618, 623 (Fla. Dist. Ct. App. 2010) ("The transfer . . . was not defective by reason of the fact that MERS lacked a beneficial ownership interest in the note . . . because MERS was . . . given explicit and agreed upon authority to make just such an assignment.").

MERS. Having reviewed appellant's remaining arguments, we conclude that these issues were not adequately raised below and are therefore improperly raised on appeal. See Old Aztec Mine, Inc. v. Brown, 97 Nev. 49, 52, 623 P.2d 981, 983 (1981) ("A point not urged in the trial court . . . is deemed to have been waived and will not be considered on appeal."). Accordingly, we

ORDER the judgment of the district court AFFIRMED.<sup>2</sup>

 J.  
Gibbons

 J.  
Pickering

 J.  
Parraguirre

cc: Hon. Patrick Flanagan, District Judge  
Mark L. Mausert  
Akerman Senterfitt/Las Vegas  
Washoe District Court Clerk

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<sup>2</sup>We have determined that this appeal should be submitted for decision on the briefs and appellate record without oral argument. See NRAP 34(f)(1).